

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
WESTERN DIVISION

TIMOTHY C. SCHRADER, ) No. ED CV 06-1316-PLA  
Plaintiff, )  
v. ) **MEMORANDUM OPINION AND ORDER**  
MICHAEL J. ASTRUE,<sup>1</sup> )  
COMMISSIONER OF SOCIAL )  
SECURITY ADMINISTRATION, )  
Defendant. )

I.

**PROCEEDINGS**

Plaintiff filed this action on December 4, 2006, seeking review of the Commissioner's denial of his applications for Supplemental Security Income payments and Disability Insurance Benefits. The parties filed Consents to proceed before the undersigned Magistrate Judge on December 29, 2006, and January 12, 2007. Pursuant to the Court's Order, the parties filed a Joint Stipulation on August 16, 2007, that addresses their positions concerning the disputed issues in the case. The Court has taken the Joint Stipulation under submission without oral argument.

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<sup>1</sup> Michael J. Astrue became the Commissioner of Social Security on February 1, 2007.

1

## **BACKGROUND**

Plaintiff was born on May 25, 1974. [Administrative Record ("AR") at 75, 280.] He obtained his G.E.D. (general educational development) certificate, and has attended approximately one year of college. [AR at 12, 88, 281.] He has past work experience as a television page, gas station attendant and cook. [AR at 83, 95-101, 274, 294-95.]

7 On December 16, 2002, plaintiff protectively filed his applications for Disability Insurance  
8 Benefits and Supplemental Security Income payments, alleging that he has been unable to work  
9 since May 1, 2002, due to bipolar disorder and ADHD, which make him unable to focus and  
10 concentrate. [AR at 12, 82, 113.] After his applications were denied initially and on  
11 reconsideration, plaintiff requested a hearing before an Administrative Law Judge (“ALJ”). A  
12 hearing was held on May 25, 2004, at which time plaintiff’s counsel appeared without plaintiff. [AR  
13 at 271-73.] A vocational expert testified. [AR at 274-76.] On June 23, 2004, the ALJ determined  
14 that plaintiff was not disabled. [AR at 24-28.] The Appeals Council granted review of this decision  
15 and, on August 24, 2004, remanded the case back to the ALJ. [AR at 59-61.] A subsequent  
16 hearing was held on April 1, 2005, at which plaintiff appeared with counsel. Plaintiff’s mother,  
17 Lyndell Netherton, testified on plaintiff’s behalf. [AR at 277-97]. A vocational expert also testified.  
18 [AR at 294-96.] On April 21, 2005, the ALJ determined that plaintiff was not disabled. [AR at 10-  
19 15.] When the Appeals Council denied review on September 27, 2006, the ALJ’s decision became  
20 the final decision of the Commissioner. [AR at 3-5.]

1

## **STANDARD OF REVIEW**

Pursuant to 42 U.S.C. § 405(g), this Court has authority to review the Commissioner's decision to deny benefits. The decision will be disturbed only if it is not supported by substantial evidence or if it is based upon the application of improper legal standards. Moncada v. Chater, 60 F.3d 521, 523 (9th Cir. 1995); Drouin v. Sullivan, 966 F.2d 1255, 1257 (9th Cir. 1992).

1       In this context, the term “substantial evidence” means “more than a mere scintilla but less  
2 than a preponderance -- it is such relevant evidence that a reasonable mind might accept as  
3 adequate to support the conclusion.” Moncada, 60 F.3d at 523; see also Drouin, 966 F.2d at  
4 1257. When determining whether substantial evidence exists to support the Commissioner’s  
5 decision, the Court examines the administrative record as a whole, considering adverse as well  
6 as supporting evidence. Drouin, 966 F.2d at 1257; Hammock v. Bowen, 879 F.2d 498, 501 (9th  
7 Cir. 1989). Where the evidence is susceptible to more than one rational interpretation, the Court  
8 must defer to the decision of the Commissioner. Moncada, 60 F.3d at 523; Andrews v. Shalala,  
9 53 F.3d 1035, 1039-40 (9th Cir. 1995); Drouin, 966 F.2d at 1258.

10

11                  **IV.**

12                  **THE EVALUATION OF DISABILITY**

13       Persons are “disabled” for purposes of receiving Social Security benefits if they are unable  
14 to engage in any substantial gainful activity owing to a physical or mental impairment that is  
15 expected to result in death or which has lasted or is expected to last for a continuous period of at  
16 least twelve months. 42 U.S.C. § 423(d)(1)(A); Drouin, 966 F.2d at 1257.

17

18                  **A. THE FIVE-STEP EVALUATION PROCESS**

19       The Commissioner (or ALJ) follows a five-step sequential evaluation process in assessing  
20 whether a claimant is disabled. 20 C.F.R. §§ 404.1520, 416.920; Lester v. Chater, 81 F.3d 821,  
21 828 n.5 (9th Cir. 1995, as amended April 9, 1996). In the first step, the Commissioner must  
22 determine whether the claimant is currently engaged in substantial gainful activity; if so, the  
23 claimant is not disabled and the claim is denied. Id. If the claimant is not currently engaged in  
24 substantial gainful activity, the second step requires the Commissioner to determine whether the  
25 claimant has a “severe” impairment or combination of impairments significantly limiting his ability  
26 to do basic work activities; if not, a finding of nondisability is made and the claim is denied. Id.  
27 If the claimant has a “severe” impairment or combination of impairments, the third step requires  
28 the Commissioner to determine whether the impairment or combination of impairments meets or

1 equals an impairment in the Listing of Impairments (“Listing”) set forth at 20 C.F.R., Part 404,  
 2 Subpart P, Appendix 1; if so, disability is conclusively presumed and benefits are awarded. Id.  
 3 If the claimant’s impairment or combination of impairments does not meet or equal an impairment  
 4 in the Listing, the fourth step requires the Commissioner to determine whether the claimant has  
 5 sufficient “residual functional capacity” to perform his past work; if so, the claimant is not disabled  
 6 and the claim is denied. Id. The claimant has the burden of proving that he is unable to perform  
 7 past relevant work. Drouin, 966 F.2d at 1257. If the claimant meets this burden, a prima facie  
 8 case of disability is established. The Commissioner then bears the burden of establishing that the  
 9 claimant is not disabled, because he can perform other substantial gainful work available in the  
 10 national economy. The determination of this issue comprises the fifth and final step in the  
 11 sequential analysis. 20 C.F.R. §§ 404.1520, 416.920; Lester, 81 F.3d at 828 n.5; Drouin, 966 F.2d  
 12 at 1257.

13

14 **B. THE ALJ’S APPLICATION OF THE FIVE-STEP PROCESS**

15 In this case, at step one, the ALJ commented that plaintiff asserted that he had not  
 16 engaged in any substantial gainful activity since the alleged onset date of the disability, and the  
 17 ALJ did not find otherwise.<sup>2</sup> [AR at 12.] At step two, the ALJ concluded that plaintiff has a “severe”  
 18 impairment from a substance induced mental disorder. [AR at 12, 14.] At step three, the ALJ  
 19 determined that plaintiff’s impairment does not meet or equal any impairment in the Listing. [AR  
 20 at 14.] The ALJ further opined that plaintiff retained the residual functional capacity (“RFC”)<sup>3</sup> “to  
 21 perform work at any exertional level, and the mental residual functional capacity set forth in the  
 22 decision.”<sup>4</sup> [AR at 14.] At step four, the ALJ concluded that plaintiff was not capable of performing

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24       <sup>2</sup> The ALJ also determined that plaintiff met the disability insured status requirements of the  
 Social Security Act on the alleged disability onset date, and that he continued to meet them through  
 25 March 31, 2004. [AR at 12.]

26       <sup>3</sup> RFC is what a claimant can still do despite existing exertional and nonexertional limitations.  
Cooper v. Sullivan, 880 F.2d 1152, 1155 n.5 (9th Cir. 1989).

27       <sup>4</sup> Although the ALJ summarizes Dr. John S. Woodard’s findings, which contain nonexertional  
 28 limitations, the ALJ does not clearly indicate whether he is basing his decision on those findings. The

1 his past relevant work. [AR at 14.] At step five, the ALJ found, using the Medical-Vocational  
2 Guidelines and the vocational expert's testimony, that there are a significant number of jobs that  
3 plaintiff is capable of performing. [AR at 15.] Accordingly, the ALJ determined that plaintiff is not  
4 disabled. [AR at 14-15.]

5  
6 V.  
7

**THE ALJ'S DECISION**

8 Plaintiff contends that the ALJ: (1) failed to properly consider the treating physician's  
9 opinion of disability; (2) failed to properly consider the consultative evaluation; and (3) failed to  
10 properly consider plaintiff's obesity. Joint Stipulation ("Joint Stip.") at 3. The Court agrees with  
11 plaintiff, and remands the matter for further proceedings.

12  
13 **A. TREATING PHYSICIAN'S OPINION**

14 Plaintiff argues that the ALJ failed to properly consider the treating physician's opinion of  
15 disability. Specifically, plaintiff asserts that the ALJ failed to provide specific and legitimate  
16 reasons for rejecting the plaintiff's marked and extreme limitations as determined by plaintiff's  
17 treating physician, Dr. Jeremiah Umakanthan. Joint Stip. at 3-6.

18 In evaluating medical opinions, the case law and regulations distinguish among the opinions  
19 of three types of physicians: (1) those who treat the claimant (treating physicians); (2) those who  
20 examine but do not treat the claimant (examining physicians); and (3) those who neither examine  
21 nor treat the claimant (non-examining physicians). See 20 C.F.R. §§ 404.1502, 416.927; Lester,  
22 81 F.3d at 830. Generally, the opinions of treating physicians are given greater weight than those  
23 of other physicians, because treating physicians are employed to cure and therefore have a  
24 greater opportunity to know and observe the claimant. Smolen v. Chater, 80 F.3d 1273, 1279 (9th  
25 Cir. 1996); Magallanes v. Bowen, 881 F.2d 747, 751 (9th Cir. 1989) (citing Sprague v. Bowen, 812

26  
27 "mental residual functional capacity set forth in the decision" is not clear. [AR at 14.] The ALJ is  
28 directed upon remand to clarify whether he is adopting or rejecting Dr. Woodard's assessment of  
plaintiff's mental residual functional capacity.

1 F.2d 1226, 1230 (9th Cir. 1987)). Although the treating physician's opinion is entitled to great  
 2 deference, it is not necessarily conclusive as to the question of disability. Magallanes, 881 F.2d  
 3 at 751 (citing Rodriguez v. Bowen, 876 F.2d 759, 761-62 (9th Cir. 1989)). Where the treating  
 4 physician's opinion is uncontradicted, it may be rejected only for "clear and convincing" reasons.  
 5 Lester, 81 F.3d at 830. Where the treating physician's opinion is contradicted, the ALJ may reject  
 6 it in favor of a conflicting opinion of an examining physician if the ALJ makes findings setting forth  
 7 specific, legitimate reasons for doing so that are based on substantial evidence in the record.  
 8 Ramirez v. Shalala, 8 F.3d 1449, 1453-54 (9th Cir. 1993).

9       Here, the ALJ's finding that the Work Capacity Evaluation (Mental)<sup>5</sup> performed by plaintiff's  
 10 treating physician, Dr. Umakanthan, was "the usual egregiously accommodative, exaggerated,  
 11 unsupported document seen from employees of [the] San Bernardino County Department of  
 12 Mental Health," is not at all supported by the record.<sup>6</sup> [AR at 27, 247-48.] The ALJ merely  
 13 generalized and speculated regarding the medical practices of the employees of the San  
 14 Bernardino County Department of Mental Health. [AR at 27.] He lumped together all employees  
 15 of this agency, and made unsupported assertions about the probative value of the Mental Residual  
 16 Functional Capacity evaluation form<sup>7</sup> without showing evidence of any actual impropriety by this  
 17 particular physician.<sup>8</sup> See Lester, 81 F.3d at 832 (quoting Ratto v. Secretary, Dept. of Health and  
 18 Human Services, 839 F.Supp. 1415, 1426 (D.Or.1993) ("The Secretary may not assume that  
 19 doctors routinely lie in order to help their patients collect disability benefits.")). The ALJ cites no

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21       <sup>5</sup> The ALJ refers to the Work Capacity Evaluation (Mental) as the "Mental Residual  
 22 Functional Capacity Evaluation" in his decision dated June 23, 2004. [AR at 27.]

23       <sup>6</sup> The Court notes that the ALJ did not specifically mention the evaluation by Dr. Umakanthan  
 24 in his decision dated April 21, 2005. However, the ALJ incorporated by reference his prior decision  
 25 dated June 23, 2004, wherein he made the quoted statement, and made that prior decision "the  
 26 decision on remand as supplemented herein." [AR at 12.]

27       <sup>7</sup> The form was signed by plaintiff's treating physician, Dr. Umakanthan. [AR at 248.]

28       <sup>8</sup> The ALJ suggests that Dr. Umakanthan did not refer to the concern of substance abuse in his  
 29 evaluation of plaintiff. [AR at 27.] However, as plaintiff notes (Joint Stip. at 5), the face of the Work  
 30 Capacity Evaluation (Mental) form clearly states that the assessment should be made "apart from the  
 31 effects of drug or alcohol use or abuse." [AR at 247.]

1 evidence to support his bald assertion, making it impossible for plaintiff to respond to the  
 2 statement, and impossible for the Court to determine if the ALJ's conclusion is based on  
 3 substantial evidence.

4 That the form is a check-the-box form can be a specific and legitimate reason for rejecting  
 5 a physician's opinion when that opinion lacks objective and clinical support. Crane v. Shalala, 76  
 6 F.3d 251, 253 (9th Cir. 1996). However, in this case, Dr. Umakanthan treated plaintiff for an  
 7 extended period as evidenced by Dr. Umakanthan's notes contained in the medical record. [AR  
 8 at 142-79.] Based on the length of the treatment and Dr. Umakanthan's experience with the  
 9 plaintiff, Dr. Umakanthan had the broadest range of knowledge regarding plaintiff's medical  
 10 condition, which is supported by the record. See Smolen, 80 F.3d at 1279; see also 20 C.F.R. §§  
 11 416.927(d)(2), 404.1527(d)(2) (Treating physicians "are likely to be the medical professionals most  
 12 able to provide a detailed, longitudinal picture of [the claimant's] medical impairment(s) and may  
 13 bring a unique perspective to the medical evidence that cannot be obtained from the objective  
 14 medical findings alone or from reports of individual examinations, such as consultative  
 15 examinations or brief hospitalizations."). Accordingly, the ALJ erred by not giving specific and  
 16 legitimate reasons supported by substantial evidence in the record for rejecting Dr. Umakanthan's  
 17 evaluation of plaintiff. As such, remand is warranted on this issue.

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19 **B. PLAINTIFF'S OBESITY**

20 Plaintiff argues that the ALJ failed to consider the impact of obesity at various stages of the  
 21 disability determination. Joint Stip. at 12.

22 Obesity is no longer a listed impairment. See Revised Medical Criteria for Determination  
 23 of Disability, Endocrine System and Related Criteria, 64 Fed. Reg. 46122 (1999) (effective  
 24 October 25, 1999) ("We are deleting listing 9.09, "Obesity," from appendix 1, subpart P of part 404,  
 25 the "Listing of Impairments" (the listings)."). However, the Social Security Administration ("SSA")  
 26 responded to various concerns about the potential effects of removing all reference to obesity from  
 27 the listings by "adding guidance about the evaluation of claims for benefits involving obesity to the

1 prefaces of the musculoskeletal, respiratory, and cardiovascular body system listings." *Id.* at  
 2 46123. The SSA clarified its intent with respect to the ALJ's consideration of obesity:

3 Our purpose in making these changes is to ensure that adjudicators  
 4 understand that we consider obesity to be a medically determinable  
 5 impairment that can be the basis for a finding of disability, and that  
 6 obesity in combination with other impairments must be considered  
 7 when evaluating disability at the listings step and other steps of the  
 8 sequential evaluation process.

9 *Id.* at 46123. Moreover, Social Security Ruling<sup>9</sup> 02-01p<sup>10</sup> states that adjudicators must consider  
 10 the effects of obesity when assessing a claim at all steps of the sequential evaluation process.  
 11 SSR 02-01p, 2000 WL 628049, \*1 (2002).

12 Here, the consultative physician, Dr. John S. Woodard, diagnosed plaintiff with obesity on  
 13 March 8, 2005. [AR at 267.] Plaintiff's height is reported as somewhere between 6'0" and 6'1" and  
 14 his weight as anywhere from 200 pounds to 275 pounds. [AR at 81, 139, 183.] Although the ALJ  
 15 noted Dr. Woodard's diagnosis of obesity in his decision [AR at 12, 13], the ALJ did not evaluate  
 16 plaintiff's obesity in combination with his other severe impairment to determine whether he met  
 17 or equaled the Listing of Impairments found in Appendix 1, Subpart P, Regulation No. 4.

18 Even if the Court were to assume that the ALJ had concluded that obesity, either alone or  
 19 in combination with plaintiff's other severe impairment, failed to meet or equal any of the listed  
 20 impairments, the ALJ nevertheless completely omitted any consideration of obesity in the other  
 21 steps of the sequential evaluation process. The ALJ failed to assess the effect of the plaintiff's  
 22 obesity upon his capacity to work. *Stack v. Barnhart*, 327 F.Supp.2d 1175, 1178 (C.D. Cal. 2004)  
 23 (citing *Celaya v. Halter*, 332 F.3d 1177, 1182 (9th Cir. 2003) ("When there is evidence of obesity,  
 24 the ALJ must determine the effect of the claimant's obesity upon her other impairments, her ability  
 25 to work, and her general health.")). Furthermore, the Regulations state that adjudicators are to

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26       <sup>9</sup> Social Security Rulings ("SSR") do not have the force of law. Nevertheless, they "constitute  
 27 Social Security Administration interpretations of the statute it administers and of its own regulations,"  
 28 and are given deference "unless they are plainly erroneous or inconsistent with the Act or  
 regulations." *Han v. Bowen*, 882 F.2d 1453, 1457 (9th Cir. 1989).

29       <sup>10</sup> SSR 02-01p, Evaluation of Obesity, was published in the Federal Register on September 12,  
 30 2002. That Ruling superseded SSR 00-3p, which was first published on May 15, 2000.

1 consider the effects of obesity “not only under the listings but also when assessing a claim at other  
2 steps of the sequential evaluation process, including when assessing an individual’s residual  
3 functional capacity.” Revised Medical Criteria, 64 Fed. Reg. at 46124. In determining that plaintiff  
4 could “perform work at any exertional level with respiratory precautions observed due to some  
5 indications of asthma,” the ALJ never even mentioned the impact of plaintiff’s obesity on his ability  
6 to work. [AR at 12.] The ALJ had a duty to determine the effect of plaintiff’s obesity at the various  
7 steps of the sequential evaluation process, including a consideration of the impact of plaintiff’s  
8 obesity on his residual functional capacity. See Stack, 327 F.Supp.2d at 1179. The ALJ’s failure  
9 to properly consider plaintiff’s obesity at each step of the sequential analysis warrants remand.

10 **VI.**

11 **REMAND FOR FURTHER PROCEEDINGS**

12 As a general rule, remand is warranted where additional administrative proceedings could  
13 remedy defects in the Commissioner’s decision. See Harman v. Apfel, 211 F.3d 1172, 1179 (9th  
14 Cir.), cert. denied, 531 U.S. 1038 (2000); Kail v. Heckler, 722 F.2d 1496, 1497 (9th Cir. 1984).  
15 In this case, remand is appropriate for proper consideration of the opinion of plaintiff’s treating  
16 physician, Dr. Umakanthan, as well as plaintiff’s obesity.<sup>11</sup> The ALJ is instructed to take whatever  
17 further action is deemed appropriate and consistent with this decision.

18 Accordingly, **IT IS HEREBY ORDERED** that: (1) plaintiff’s request for remand is **granted**;  
19 (2) the decision of the Commissioner is **reversed**; and (3) this action is **remanded** to defendant  
20 for further proceedings consistent with this Memorandum Opinion.

21  
22 DATED: August \_\_, 2007

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23 PAUL L. ABRAMS  
24 UNITED STATES MAGISTRATE JUDGE

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26 \_\_\_\_\_  
27 <sup>11</sup> As the ALJ’s consideration on remand of the treating physician’s opinion and plaintiff’s obesity  
28 may impact the significance of the consultative evaluation performed by Dr. John S. Woodard, the  
Court will exercise its discretion not to address plaintiff’s second issue at this time. Rather, Dr.  
Woodard’s opinion should be re-examined in light of the remand order. See also, fn 4, supra.